

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FERNANDO CASTILLO,

Plaintiff,

-against-

DANIELS SHARPSMART, INC., and "JOHN DOE",

Defendants.

x

: **Civil Action No.:**

:

: **NOTICE OF REMOVAL**

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TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Defendant-Petitioner, DANIELS SHARPSMART, INC., files this notice to remove the foregoing case to the United States District Court for the Southern District of New York, and respectfully shows this Court:

1. A civil action was commenced in the Supreme Court of Bronx County, State of New York, in which the above-named individual, FERNANDO CASTILLO is a plaintiff and the petitioner, DANIELS SHARPSMART, INC., is a defendant. The action is entitled FERNANDO CASTILLO v. DANIELS SHARPSMART, INC. and "JOHN DOE", and bears Index Number 815818/2021E.

2. This is a civil action seeking damages arising out of a motor vehicle accident allegedly caused by the defendant's negligence. The plaintiff alleges personal injuries.

3. On November 18, 2021, plaintiff Fernando Castillo filed a Summons and Complaint in the Supreme Court of New York, County of Bronx. A copy of the Summons and Verified Complaint is annexed hereto as **Exhibit "A."** The plaintiff's complaint demands an amount in excess of the lower courts jurisdictional limits. Id. at paragraph 15. Issue was joined

by service of a Verified Answer on behalf of the defendant on or about May 5, 2022. A copy of the Verified Answer is annexed hereto as **Exhibit “B.”**

4. This action involves a controversy between a citizen of the State of New York, and a corporation organized under the laws of the State of Delaware with a principal place of business located at 111 W Jackson Boulevard, Suite 1900, Chicago IL 60604, in that: (a) the plaintiff is now, and was at the time said action was commenced, a resident of the State of New York; and (b) petitioner, DANIELS SHARPSMART, INC. was, at the time of the accident, and remains a corporation organized under the laws of the State of Delaware.

5. In addition, with critical implication to this case, “[i]n determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a), the citizenship of defendants sued under fictitious names shall be disregarded.” 28 U.S.C. § 1441(b)(1). For example, “John Doe” is a fictitious name to be disregarded for purposes of the diversity of citizenship inquiry. *See Cruz-Guerrero v. Wal-Mart Stores E., L.P.*, No. 20-81577-CV-MIDDLEBROOKS/Bran, 2021 U.S. Dist. LEXIS 258928, at *1 (S.D. Fla. Jan. 13, 2021) (referring to Wal-Mart store manager “John Doe” as a fictitious name to be disregarded under section 1441(b)(1)); *see also Walker v. CSX Transp., Inc.*, 650 F.3d 1392, 1395 n.11 (11th Cir. 2011) (substantially similar).

6. Defendant-Petitioner also served plaintiff with a Demand for Bill of Particulars on or about June 30, 2022.

7. On or about August 25, 2022, plaintiff provided a response to the Demand for Bill of Particulars alleging \$77,473.69 in physician expenses/special damages. As such, the amount in controversy exceeds \$75,000.00. In addition, to the \$77,473.69 in special damages, plaintiff also alleges injuries to his cervical and lumbar spine with three surgeries, injuries to his left

shoulder with surgery, and injuries to his right shoulder with surgery. A copy of plaintiff's response to the Demand for Bill of Particulars is annexed hereto as **Exhibit "C."**

8. Pursuant to 28 U.S.C. §1446(b), a Notice of Removal shall be filed within thirty (30) days after receipt by defendant, by service or otherwise, of the initial pleading or of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable. Here, defendant-petitioner did not receive any documentation from plaintiff regarding the amount of damages or injuries alleged until receiving a response to defendant-petitioner's Demand for a Verified Bill of Particulars on August 25, 2022, alleging over \$75,000 in special damages and several injuries outlined above, including four surgeries. Therefore, this Petition for Removal is timely filed since it is filed within thirty (30) days of receipt of plaintiff's Verified Bill of Particulars.

9. Courts in this district have consistently concluded that removal jurisdiction is proper where a Bill of Particulars alleges damages in excess of \$ 75,000. *See, e.g., Scottsdale Ins. Co. v. Acceptance Indem. Ins. Co.*, No. 19 Civ. 7294, 2019 U.S. Dist. LEXIS 208526, 2019 WL 6498316, at *4 (S.D.N.Y. Dec. 3, 2019).

10. Thus, there is complete diversity between plaintiff and defendant, and the amount in controversy exceeds \$75,000.00. As such, said action is one of which the District Courts of the United States have original jurisdiction under 28 U.S.C. § 1332 and 28 U.S.C. § 1441. Removal of the state court action to this Court is therefore appropriate under 28 U.S.C. § 1441(b).

11. Furthermore, the 2nd Circuit established a bright line test for determining when the amount in controversy jurisdictional threshold has been triggered for the purposes of removal. Pursuant to this test, the amount of controversy is not established, and thus the removal clock does not begin to run, "until the plaintiff serves the defendant with a paper that explicitly

specifies the amount of monetary damages sought.” *Moltner v. Starbucks Coffee Co.*, 624 F.3d 34, 37 (2d. Cir. 2010). Thus, the removal clock begins to run when plaintiff explicitly discloses damages in excess of federal court jurisdiction. Therefore, this notice of removal is timely as plaintiff provided a response to the Demand for Bill of Particulars alleging more than \$75,000 in damages on August 25, 2022.

12. Written filing of this notice will be given to the plaintiff promptly after the filing of this notice, as is required by law.

13. A true and correct copy of this notice will be filed with the Clerk of the Supreme Court of Bronx County, State of New York promptly after the filing of this notice, as is required by law.

14. Attached to this notice, and by reference made ass part hereof, are true and correct copies of all process, pleadings and orders filed in the aforesaid action.

15. By filing this Notice of Removal, petitioners do not waive any defense which may be available to them, specifically including, but not limited to, their right to contest in personam jurisdiction over the petitioners, improper service of process upon the petitioners, and the absence of venue in this Court or in the court from which the action has been removed.

WHEREFORE, petitioners pray that this action proceed in this Court as an action properly removed thereto.

Dated: New York, New York
September 21, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

Md. Ashfaquzzaman Choudhury

Md. Ashfaquzzaman Choudhury (AC-1908)

Attorneys for Defendant

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TO:

LAW OFFICES OF MITCHELL KLAFTER, P.C.

Attorneys for Plaintiff

FERNANDO CASTILLO

23-25 31st Street, Suite 410

Astoria, New York 11105

(718) 465-1160

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September 2022, the foregoing document, **NOTICE OF REMOVAL ALONG WITH ALL EXHIBITS and CIVIL COVER SHEET**, was served via first class mail upon:

LAW OFFICES OF MITCHELL KLAFTER, P.C.

Attorneys for Plaintiff

FERNANDO CASTILLO

23-25 31st Street, Suite 410

Astoria, New York 11105

(718) 465-1160

I certify that the foregoing statements made by me are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment.

Dated: New York, New York

September 21, 2022

By: Md. Ashfaquzzaman Choudhury

Md. Ashfaquzzaman Choudhury, Esq.

(AC-1908)